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MAY 27 1997

Federal Communications Commission  
Office of Secretary

May 27, 1997

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NEW YORK, NY 10022-2565

NEW JERSEY OFFICE  
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NEWARK, NJ 07102-5397

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

SPECIAL COUNSEL  
JEROLD L. JACOBS

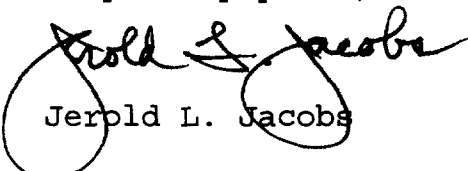
Re: MM Docket No. 97-86  
FM Table of Allotments  
(Camdenton, Missouri)

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of our client, Lake Broadcasting, Inc., are an original and four (4) copies of its "Counterproposal Reply Comments of Lake Broadcasting, Inc." in the above-referenced matter.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,

  
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**  
MAY 27 1997

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 97-86  
Table of Allotments, ) RM-9025  
FM Broadcast Stations ) RM-9084  
(Camdenton, Laurie, and Humansville<sup>1</sup> Missouri) )

Federal Communications Commission  
Office of Secretary

TO: Chief, Allocations Branch  
Mass Media Bureau

**COUNTERPROPOSAL REPLY COMMENTS**  
**OF LAKE BROADCASTING, INC.**

**LAKE BROADCASTING, INC.** ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, by its attorneys and pursuant to §1.415(d) of the Commission's Rules, hereby submits its Counterproposal Reply Comments in support of a "global solution" to this proceeding. In support whereof, the following is shown:

1. The subject rulemaking proceeding was initiated by Notice of Proposed Rule Making ("NPRM"), DA 97-414, released Feb. 28, 1997, following a petition for rulemaking filed by Camdenton Community Broadcasters ("CCB"). The NPRM proposes to allot Channel 265A to Camdenton, Missouri as a first local commercial FM broadcast service, with a site restriction 2.9 kilometers north of Camdenton and allotment reference coordinates of 38-02-00 and 92-44-20. Id. at ¶2 and n.2. In its Comments, Lake fully demonstrated (at ¶¶'s 2-5) that Channel 265A can be allotted to Camdenton with a modified site restriction 15.2 kilometers west of Camdenton and modified allotment reference coordinates of 38-02-55 and 92-54-45 in full compliance with the minimum spacing requirements of §73.207 of the Rules with respect to all

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<sup>1</sup> The communities of Laurie and Humansville, Missouri have been added to the caption.

existing or proposed stations and allotments. Most importantly, these slight changes would eliminate any conflict between CCB's proposal in this proceeding and Lake's proposal in MM Docket No. 89-120 (Northweye, Cuba, Waynesville, Lake Ozark, and Eldon MO)(the "Eldon" proceeding)<sup>2</sup> that Lake's Station KBMX be upgraded to Channel 270C1. For Lake's Channel 270C1 allotment to be implemented, Lake proposed in its January 5, 1993 "Supplement to Petition for Reconsideration" in the Eldon proceeding (at ¶3) that Channel 264A be allotted to Waynesville, instead of the present Channel 272A or the Channel 221A which was previously proposed. Lake's recommended changes in CCB's proposal would permit the allotment of Channel 264A to Waynesville, Channel 270C1 to Eldon, and Channel 265A to Camdenton.

2. On the Comment filing deadline in this proceeding, Bott Communications, Inc. ("Bott") filed a counterproposal (RM-9084) to allot Channel 265C3 to Laurie, Missouri, instead of allotting Channel 265A to Camdenton. Bott urges that its proposal is entitled to a decisive allotment preference over CCB's proposal under FM Channel Policies/Procedures, 90 FCC 2d 88, 91 (1982). Attached hereto as Exhibit A is an Engineering Statement ("Beverage Statement") by Mr. Clarence M. Beverage of Communications Technologies, Inc., which concludes that, like CCB's original Camdenton proposal, Bott's counterproposal is mutually exclusive with Lake's proposal to allot Channel 264A to Waynesville, Missouri. Therefore, assuming arguendo that the Commission is inclined to prefer Bott's Laurie allotment to CCB's Camdenton allotment, Lake wishes to propose a "global solution" which will permit the Commission to allot Channel 265C3 to Bott, albeit at a different but comparable community

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<sup>2</sup> See Report and Order in MM Docket No. 89-120, 7 FCC Rcd 1449 (Mass Media Bur. 1992), appeal pending.

(Humansville, Missouri), in order to preserve Lake's earlier-filed Waynesville Channel 264A proposal.

3. In its previous Comments (at ¶2), Lake fully demonstrated that it was an interested party in this proceeding. Therefore, turning immediately to the attacks contained in Bott's May 6, 1997 Reply Comments (at 3-4) concerning Lake's Waynesville Channel 264A protection proposal, Lake urges that Bott's objections are misplaced for two reasons. First, as to the timing and validity of Lake's Waynesville Channel 264A proposal in the Eldon proceeding, it is well established that the Commission welcomes innovative rulemaking solutions, regardless of when they are presented in a proceeding. See FM Table of Allotments (Corpus Christi and Three Rivers TX), 11 FCC Rcd 517 ¶5 (Mass Media Bur. 1996)("it is appropriate to suggest in reply comments alternate channels for communities at issue in a proceeding"). Moreover, such solutions proposed in reply comments are not subject to the same strict standard that counterproposals must meet. Id. Thus, whether or not the allotment of Channel 264A to Waynesville was technically viable when Lake first proposed it in the Eldon proceeding in 1993, it is viable now, and the Eldon proceeding is still pending (on reconsideration). Therefore, it is both technically and legally appropriate for Channel 264A to be protected in this proceeding.

4. Second, counsel for Bott is still supporting use of Channel 264A at Waynesville to achieve a "global solution" in another FM channel rulemaking proceeding on behalf of another client -- Zimmer Radio of Mid-Missouri, licensee of Station KCMQ(FM), Columbia, Missouri. See Zimmer's February 15, 1996 "Opposition to Petitions for Reconsideration (at 8) concerning FM Table of Allotments (Columbia, Bourbon, Leasburg, Gerald, Dixon and Cuba MO)(MM Docket No. 92-214) (the "Columbia" proceeding), 10 FCC Rcd 12624 (Mass Media

Bur. 1995). In the Columbia proceeding, Lake filed a Reply on February 28, 1996, which "welcome[d] the realization by Zimmer...that Channel 264A...may be available to Waynesville, Missouri...." Lake submits that Bott's counsel is legally and ethically estopped from arguing against protection of Waynesville Channel 264A in this proceeding, while the same counsel continues to argue in favor of protecting Waynesville Channel 264A in the Columbia proceeding. See D.C. Rules of Professional Conduct, Rule 1.7 (lawyer cannot represent clients with adverse positions on same matter). Here, the "matter" in question is protecting Waynesville Channel 264A. If Zimmer prevails on its pro-Channel 264A argument in the Columbia proceeding, that will dictate the Commission's result in both proceedings and negate Bott's anti-Channel 264A here, and vice-versa. The Commission should require Bott's counsel to adopt a single position on this question in both proceedings, or withdraw from representing Zimmer and/or Bott.

5. As to the merits of Lake's "global solution" in this proceeding, Lake is aware that the Commission generally frowns upon introducing a new community, like Humansville, Missouri, into a rulemaking proceeding at this post-comment stage. See Implementation of BC Docket No. 80-90, 5 FCC Rcd 931, 932 n. 4 (1990)("[a] conflicting proposal involving a new community submitted after the close of the comment period is not considered in the proceeding"). However, Lake urges that good cause exists for waiver of that prohibition in the instant case. The reason is that Lake's "global solution" permits the Commission to rectify the adverse effect on Lake's substantive and administrative due process rights caused by the Commission not protecting Lake's Waynesville Channel 264A proposal in the FM engineering data base when it was first proffered in the Eldon proceeding in January 1993 -- long before Bott filed its counterproposal herein. Had the Commission done so, Bott would never have filed its

counterproposal four years later. In short, while Bott cannot be blamed for not being aware of the need to protect Channel 264A at Waynesville when it filed its Laurie counterproposal in this proceeding, neither should Lake be penalized for the Commission's omission.

6. The Beverage Statement shows that if the Commission allows Bott to specify Channel 265C3 at Humansville, instead of Laurie, in this proceeding, Bott will still receive a decisive allotment preference over CCB's Camdenton proposal. Moreover, however, the proposed allotment of Channel 264A to Waynesville will be protected, permitting the mutual exclusivity among the Eldon, Columbia, and Ava<sup>3</sup> proceedings to be severed in a way that also permits the Commission to allot Channel 270C1 to Eldon. Thus, the proposed Humansville allotment waiver allows a "global solution" to occur in four related Missouri FM channel rulemaking proceedings. Surely that result is in the paramount public interest. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986)(§307(b) of the Communications Act is better served by granting proposals to serve three communities instead of one; channel allotment resolutions that maximize the number of communities that will receive new or upgraded facilities are favored).

WHEREFORE, in light of the foregoing, Lake Broadcasting, Inc. respectfully requests that the Commission either should allot Channel 265A to Camdenton, Missouri with the site

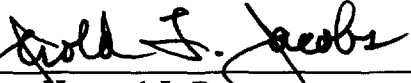
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<sup>3</sup> See FM Table of Allotments (Ava, Branson, and Mountain Grove MO)(MM Docket No. 91-352), 10 FCC Rcd 13035, 13036 n.3 (Mass Media Bur. 1995).

restriction and allotment reference coordinates specified in Paragraph 1 above, or should allot Channel 265C3 to Humansville, Missouri in accordance with Exhibit A hereto.

Respectfully submitted,

**LAKE BROADCASTING, INC.**

By   
Howard J. Braun  
Jerold L. Jacobs

**ROSENMAN & COLIN LLP**  
1300 - 19th Street, N.W. Suite 200  
Washington, D.C. 20036  
(202) 463-4640

Its Attorneys

Dated: May 27, 1997

**ENGINEERING STATEMENT  
IN SUPPORT OF REPLY COMMENTS  
OF LAKE BROADCASTING, INC.  
NPRM DA 97-414 CHANNEL 265A  
CAMDENTON, MISSOURI**

**MAY 1997**

**ENGINEERING STATEMENT  
IN SUPPORT OF REPLY COMMENTS  
OF LAKE BROADCASTING, INC.  
NPRM DA 97-414 CHANNEL 265A  
CAMDENTON, MISSOURI**

**MAY 1997**

**SUMMARY**

The following engineering statement has been prepared on behalf of **Lake Broadcasting, Inc. ("Lake")**, licensee of station KBMX(FM), Eldon, Missouri. In MM Docket No. 91-352, FM Table of Allotments (Ava, Branson and Mountain Grove, Missouri) and MM Docket No. 92-214, FM Table of Allotments (Columbia, Bourbon, Leasburg, Gerald, Dixon and Cuba, Missouri), **Lake** urged the Commission to allot Channel 264A to Waynesville, Missouri to remove a mutual exclusivity and to allow the Commission to allot Channel 270C1 to **Lake** at Eldon, Missouri. A more detailed description of the Rule Making history may be found in the legal argument covering this statement.

The proposed allotment of Channel 265A by Camdenton Community Broadcasters ("CCB") at the proposed reference coordinates of N.L. 38-02-00, 92-44-20 was mutually exclusive with **Lake's** proposal to use Channel 264 at Waynesville, Missouri. However, the mutual exclusivity was readily resolved by the use of alternate reference coordinates for Channel 265A at Camdenton as specified in **Lake's** April 21, 1997 Comments.

On April 21, 1997, Bott Communications, Inc. (Bott) filed a counterproposal to the Camdenton, Missouri Channel 265A allotment suggesting that Channel 265C3 be allotted to Laurie, Missouri in lieu of Channel 265A to Camdenton, Missouri. Like the Camdenton proposal, Bott's proposal is also mutually exclusive with **Lake's** proposal to allot Channel 264A to Waynesville, Missouri.

**Lake** suggests herein that Laurie is not the preferred community for Bott's Channel 265C3 operation and that a Class C3 allotment at Humansville, Missouri represents a better and more efficient use of the

frequency. The reference coordinates presented herein for Channel 265C3 at Humansville, Missouri are fully compatible with the proposed allotment of Channel 264A to Waynesville, Missouri.

### **LAURIE/HUMANSVILLE COMPARISON**

Laurie, Missouri had a 1990 U.S. Census population of 507 persons versus 1,084 persons for Humansville, Missouri. Laurie is located in Morgan County which had a 1990 population of 15,574, while Humansville is located in Polk County with a population of 21,826. Neither community has an existing aural outlet.

The community of Laurie is served, on an allotment basis, by twelve FM channels versus Humansville by four FM channels. This study is based on allotment coordinate data from the community reference coordinates with 60 dBu contour radius values as follows:

Class	A	26 kM
	C3	37 kM
	C2	50 kM
	C1 & C	70 kM

Note: All distances 2 kM less than full contour distances to allow service to 100% of community.

<u>Community</u>	<u>Allotment</u>	<u>Distance to Laurie in kM</u>	<u>Number</u>
Lebanon, MO	279C	43.2 kM	1
Lebanon, MO	300C2	48.4 kM	2
Osage Beach, MO	228C2	15.9 kM	3
Eldon, MO	270C2	23.0 kM	4
Versaille, MO	236C3	26.8 kM	5
Lake Ozark, MO	274A	25.7 kM	6
Clinton, MO	241C	70.4 kM	7
Sunrise Beach, MO	212A	6.5 kM	8
Jefferson City, MO	295C	59.9 kM	9
California, MO	232C2	43.0 kM	10
Camdenton, MO	219C3	21.3 kM	11
Eldon, MO	224C2	25.7 kM	12

<u>Community</u>	<u>Allotment</u>	<u>Distance to Humansville in kM</u>	<u>Number</u>
Halfway, MO	256C3	27.9 kM	1
Springfield, MO	206C1	66.7 kM	2
Springfield, MO	234C	69.9 kM	3
Pleasant Hope, MO	238C2	45.5 kM	4

### **HUMANSVILLE, MISSOURI**

The U.S. Atlas reference coordinates for Humansville, Missouri are as follows:

N.L. 37-47-42

W.L. 93-34-30

The proposed Channel 265C3 allotment coordinates for Humansville, Missouri are:

N.L. 37-55-43

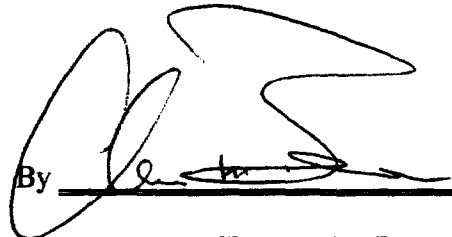
W.L. 93-30-51

Table I, attached, is an allocation study for Channel 265C3 at the alternate reference coordinates specified above showing full compliance with *Section 73.207* distance separation standards. Table II is a tabulation of distance to the 70 dBu and 60 dBu service contours. The proposed allotment coordinates provide full 70 dBu service to the community as shown on Figure 1, attached.

### **CONCLUSION**

Bott's proposal to allot Channel 265C3 to Laurie, Missouri is mutually exclusive with Lake's proposal to use Channel 264A at Waynesville, Missouri. Channel 265C3 would be better used at Humansville, Missouri as this proposal is not mutually exclusive with the use of Channel 264A at Waynesville, Missouri. Further, Humansville is the larger community and is served by fewer than five full time FM aural services, while Laurie is served by twelve aural services.

The foregoing was prepared on behalf of **Lake Broadcasting, Inc.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By  \_\_\_\_\_

**Clarence M. Beverage**  
for Communications Technologies, Inc.  
Marlton, New Jersey

**SUBSCRIBED AND SWORN TO** before me,

this 23<sup>rd</sup> day of May, 1997,

Esther G. Sperbeck, NOTARY PUBLIC

ESTHER G. SPERBECK  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES OCT 15, 1997

**TABLE I**

**ALLOCATION STUDY PROPOSED CHANNEL 265C3  
(PROPOSED ALTERNATE COMMUNITY COORDINATES)  
HUMANSVILLE, MISSOURI**

**MAY 1997**

Search of channel 265C3 (100.9 MHz), at N. 37 55 43, W. 93 30 51.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Aurora	MO	263	C2	U	95.9	56.0	180.0°	39.9
KGMVFM	Aurora	MO	263	C2	L	92.6	56.0	180.2°	36.6
ALC	Deerfield	MO	264	C3	A	98.9	99.0	256.3°	-0.0
KJPW	Waynesville	MO	264	A	U	102.5	89.0	120.5°	13.5
KMZU	Carrollton	MO	264	C1	L	159.9	144.0	3.5°	15.9
ALC	Eureka Springs	AR	265	A	U	173.1	142.0	186.9°	31.1
KTCN	Eureka Springs	AR	265	A	L	173.1	142.0	186.9°	31.1
ALC	Camdenton	MO	265	A	A	69.1	142.0	80.3°	-72.9
ALC	Miami	OK	265	A	U	160.9	142.0	224.3°	18.9
KGLC	Miami	OK	265	A	L	160.9	142.0	224.3°	18.9
ALC	Harrisonville	MO	266	C1	U	148.5	144.0	324.3°	4.5
KCFX	Harrisonville	MO	266	C1	L	152.7	144.0	326.3°	8.7
ALC	Springfield	MO	267	C	U	96.2	96.0	147.8°	0.2
KTXR	Springfield	MO	267	C	L	96.2	96.0	147.8°	0.2

## TABLE II

### 25 kW @ 100 m HAAT - ALTERNATE COMMUNITY COORDINATES CHANNEL 265C3 HUMANSVILLE, MISSOURI

MAY 1997

#### DISTANCES TO CONTOURS (Kilometers):

Frequency: 100.0000 MHz  
Coordinates: N 37 55 43 W 93 30 51  
F(50,50) Curves Number of Contours: 2

AZ (deg)	HAAT (m)	ERP (kW)	CONTOUR LEVELS (dBu):	
			70.0	60.0
.0	104	25.0000	23.7	39.8
45.0	93	25.0000	22.4	37.9
90.0	88	25.0000	21.8	36.9
135.0	84	25.0000	21.3	36.2
180.0	78	25.0000	20.5	34.9
225.0	103	25.0000	23.6	39.6
270.0	120	25.0000	25.2	42.0
315.0	130	25.0000	26.1	43.4
* 200.0	83	25.0000	21.2	36.0

#### \* Radial over community

60 dBu area = 4,765 square km  
60 dBu population = 31,612 persons

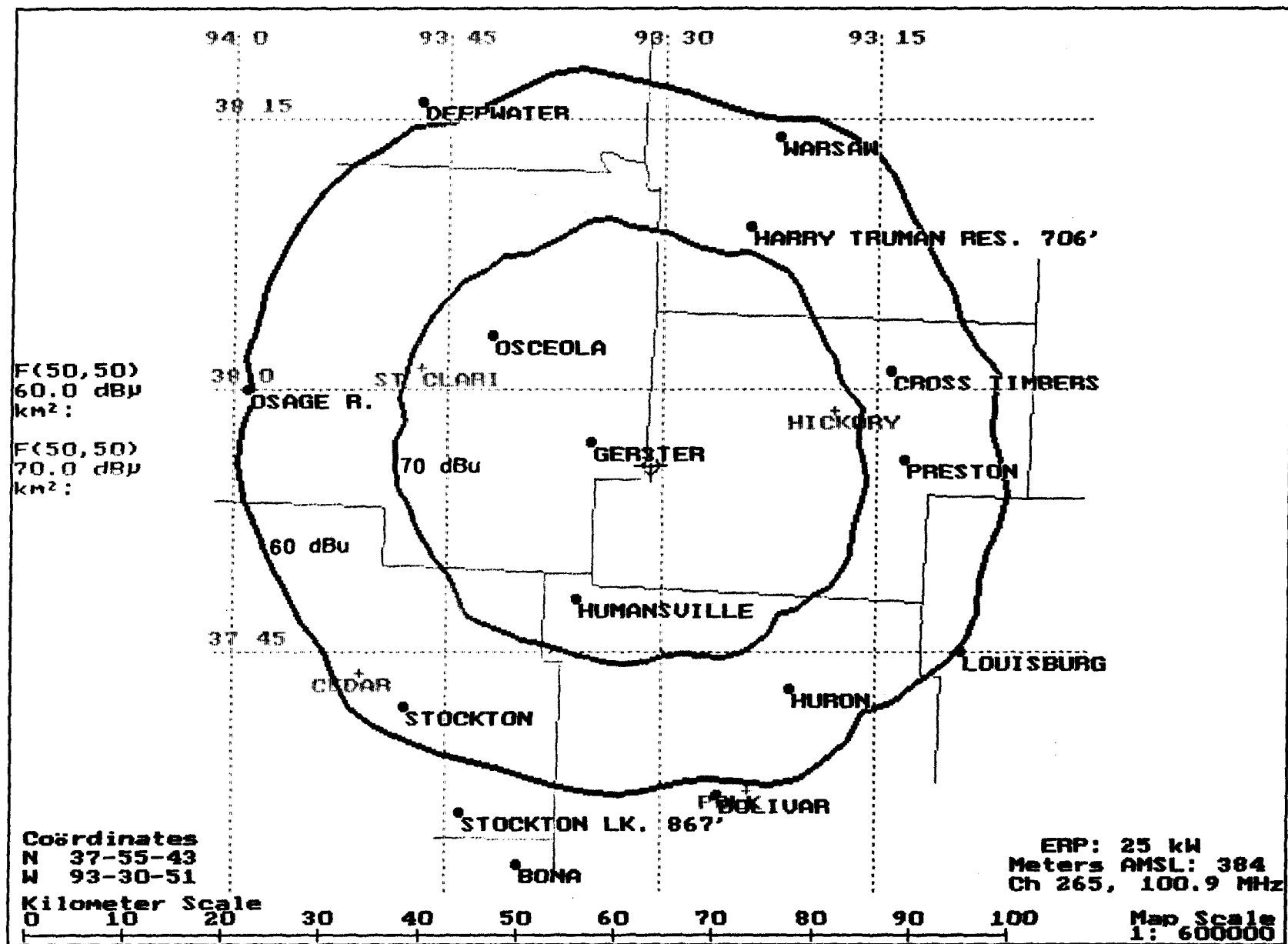


Figure 1

**CERTIFICATE OF SERVICE**

I, Maria Alvarez-Newsom, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 27th day of May, 1997, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**Counterproposal Reply Comments of Lake Broadcasting, Inc.**" to the following:

John A. Karousos, Chief\*  
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Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
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**COUNSEL FOR BOTT COMMUNICATIONS, INC.**

  
Maria Alvarez-Newsom

**\*BY HAND**